

Act

A set of rules that has been passed by Parliament, received Royal Assent and become law.

Agency Agreement

A document signed by an estate agent and given to an employee (agent's representative or another estate agent), authorising the employee to perform the functions of a real estate agent.

This may be known as an Appointment to act.

Agency Principal

The Real Estate agent in charge and responsible for the day-to-day administration of a real estate agency and who is in effective control.

Also known as Licensee in charge

Auction of land

A public sale of property in which the highest bidder at or beyond the reserve price is normally the purchaser of the property.

Authority to act

A document signed by an estate agent and given to an employee (agent's representative or another estate agent), authorising the employee to perform the functions of a real estate agent.

This may be known as an Agency Agreement or Appointment to act.

B

Bond

An amount paid as an assurance that the tenant will not breach the conditions of the tenancy, for example, the tenant will pay rent and on vacating will leave the premises in a state of good repair and order.

Branch Manager

An estate agent or approved agent's representative who manages the branch office of an estate agency business.

Branch Office

Any agency office, other than the principal office, from where real estate business is conducted.

C

Certificate IV in Real Estate Practice

"satisfactorily completed Certificate IV in Real Estate Practice" means completing Certificate IV in Real Estate Practice (CPP41419) with a registered training organisation demonstrating satisfactory completion of all of the following units--

- (a) 5 core units,
- (b) 5 units from Group A--Residential Property Sales,
- (c) 5 units from Group B--Residential Property Management,

(d) 3 elective units

Co-owners

Where a number of people have joint ownership of a property.

Commercial Property

Property zoned and used as office buildings, shops and retail premises.

Commission

The fee paid by the principal (vendor or landlord) to the agency for undertaking a transaction relating to the sale, purchase, leasing or management of property. The amount of commission is negotiable between the principal and the agency. It may be either a flat fee or a percentage (or a combination of both) of the purchase price or the rental collected.

Commission Income

The income that accrues to salespeople from their share of the commission that an estate agency earns from the sale of property.

Consumer protection

ensures the rights of consumers as well as fair trade, competition and accurate information in the marketplace

Cooling-off period

The period of four business days after the purchaser signs the contract of sale, during which the purchaser may withdraw from the purchase. The cooling-off period does not apply in certain circumstances, including where the property is sold by auction.

CPP41419

CPP41419 Certificate IV in Real Estate Practice - Qualification required for property licensing in Australia as outlined by the Australian government on training.gov.au

To achieve this qualification, competency must be demonstrated in:

18 units of competency:

5 core units

13 elective units.

The elective units must ensure the integrity of the Australian Qualifications Framework (AQF) qualification alignment, contribute to a valid, industry-supported vocational outcome and are to be chosen as follows:

all the elective units in any two elective groups from Groups A–L listed below must be chosen

the remaining elective units may be chosen from the general elective units listed below or the CPP Property Services Training Package.

D

Deposit

An amount of the purchase price paid by the purchaser, usually at or around the time of making a written offer. It is usually 10% of the purchase price. The deposit must be held in a trust account by an estate

agency or by the solicitor or conveyancer, or may be held jointly in a special purpose account by the vendor and purchaser.

Dummy Bid

A false bid made or accepted by the auctioneer. Dummy bids can include bids made by a non-genuine bidder and 'fictitious' bids pulled out of the air by the auctioneer. Any bid made on behalf of the vendor by anyone other than the auctioneer under the auction rules is considered a dummy bid. Dummy bidding is illegal.

E

Employment agreement

The contract that sets out the terms and conditions of employment for an employee and which is agreed between an employer and employee.

Ethics

The standards governing the conduct of real estate practitioners. The standards may be set in legislation or by an industry body and are based on the principle of right conduct.

F

Fiduciary Relationship/Obligation

Fiduciary Relationship

A fiduciary relationship imposes the highest duty known to the law, and requires a person who acts on behalf of another to always act in the utmost good faith. For example, a person acting as trustee owes a fiduciary duty to the beneficiary of the trust.

In agency law the agent owes a fiduciary duty to the client (known as the principal), and must never allow his own interests to conflict with those of the client.

Another aspect of the fiduciary duty is that the agent must make full disclosure to the client. Further, the agent has a duty not to make a secret profit from the fiduciary relationship.

When considering the term "agent" it is important not to confuse the role of the estate agent with the legal definition of agent.

Franchise

Franchise allows one business to operate under the trading name of another business' established brand and sell its products and/or services for a specified period.

I

Industrial Property

Property Zoned and used for factories and warehouses

L

Landlord

The owner or head lessor of leased property.

Also known as a Rental Provider or Lessee

Late Bid

A bid that is made by a prospective purchaser after a property has been knocked down at auction to the successful bidder.

The business of real estate

Real estate is the land, the buildings and the right to occupy a specified building or part of a building.

A career in real estate offers an opportunity to work with a variety of people, assisting them with important decisions such as buying, selling or renting a home or investment property.

People decide to become real estate agents for many reasons:

They like to work with others.

They want to be part of a dynamic industry that offers a range of career paths.

They are interested in a job that pays commission and rewards individual effort.

Real estate agents must be able to research, analyse, negotiate, plan and market. They often work long days and weekends, and are part of an industry that is subject to a fluctuating market and intense competition. At the same time, they must meet high ethical standards and be aware of the legislation that governs their area of work.

Real estate relationships and roles

A real estate agent may have a relations and business dealings with:

vendors/sellers

purchasers/buyers

landlords/rental provider/lessee

tenants/renter

other parties to the real estate transaction such as third parties involved in a property transaction

Real estate activities and services

residential sales

residential property management

property management business development

commercial/industrial/retail property management

commercial/industrial/retail sales

auctioneering

buyer's agent

stock and station agent

business broking

Conditions and requirements

Work conditions

Real estate salespeople often work irregular hours, including weekends.

This occupation involves a great deal of contact with the public and with associated professionals, such as builders, solicitors, conveyancers and banking and local government personnel.

Personal requirements

good communication and negotiation skills

good presentation and a pleasant manner

able to network effectively

strong sales focus
good organisational skills and attention to detail
good working knowledge of the local area.

Real estate sales

Real estate salespeople arrange the sale of houses, businesses, flats, factories, shops and farms. Agents can be licensed or registered.

Registered agents are employed to work under the supervision of a licensed Real Estate Agent. There may be some limitation to tasks that can be carried out by registered agents, which will vary from state-to-state.

See the definition for real estate salesperson relevant to your State's legislation.

A commercial real estate agent helps clients buy, sell, or lease properties that will be used for business purposes (commercial property).

Real estate sales

Duties and tasks

Real estate salespeople (residential sales and management) may perform the following tasks:

discuss the method of sale, presentation of the property, costs and inspection times with vendors (sellers)
estimate the current market price and suggest a reserve or minimum selling price
list details of land or buildings for sale and arrange for the advertising of properties
assess buyers' needs and locate properties for their consideration
take prospective buyers to inspect properties
advise on merits of properties and terms of sale
draw up legal agreements between vendors and buyers
arrange finance and insurance.

Buyers' agent

A licence holder who wishes to act solely as a buyers' agent may have a condition placed on their licence noting that they may only act as a buyer's agent.

Duties and tasks

Buyers' agents may perform the following tasks:

assess buyers' needs and locate properties for their consideration
take prospective buyers to inspect properties
advise on merits of properties and terms of sale

Property management

Property managers arrange property management of houses, businesses, flats, factories, shops and farms. Agents can be licensed or registered.

Registered agents are employed to work under the supervision of a licensed real estate agent. There may be some limitation to tasks that can be carried out for registered agents, which will vary from state-to-state.

See the definition for real estate salesperson/registration relevant to your State's legislation.

A commercial real estate agent helps clients buy, sell, or lease properties that will be used for business purposes (commercial property).

Real estate property manager
manages rental properties on behalf of the owners
drawing up leases
handling finances
handling maintenance issues

advertising vacant premises
arranging property inspections
choosing suitable tenants in consultation with the property owner

Property management business development manager (BDM)

A business development manager informs others about company products and services and acts as the point of contact for new clients and existing clients with a view to developing and diversifying business so that income increases, and the future and growth of the organisation are guaranteed.

Duties and tasks

Developing growth strategies and plans

Managing and retaining relationships with existing clients

Increasing client base

Having an in-depth knowledge of business products and value proposition

Writing business proposals

Negotiating with stakeholders

Identifying and mapping business strengths and customer needs

Researching business opportunities and viable income streams

Following industry trends locally and internationally

Drafting and reviewing contracts

Reporting on successes and areas needing improvements

Further skill may include:

High-level communication skills

Stakeholder management skills

Proven ability to negotiate

Experience with design and implementation of business development strategy

Conflict resolution

The ability to self-motivate and motivate a team

Experience working to and exceeding targets

Auctioneer

Auctioneers conduct sales at which properties are sold to the person offering the highest purchase price.

The appropriate Auctioneer Accreditation must be obtained to perform auctions as per State legislation.

Duties and tasks

Auctioneers perform the following tasks:

talk to vendors (sellers) to determine the price at which the vendor is prepared to sell. This is known as setting the 'reserve price'

read out the terms and conditions of sale at auctions and, if necessary, present relevant documents (e.g. zoning restrictions applying to real estate)

answer questions to make sure the terms of sale are clear

comment on any special features of the property being sold, call a starting price and ask for the first bid

ask for bids and carefully adjust the amount by which bids are advanced until the property goes 'under the hammer' to the highest bidder

if the bidders do not reach the 'reserve price' the property is not sold and is 'passed in'.

Auctioneers may specialise in selling certain types of goods such as residential real estate, large farming properties and livestock.

Additional conditions and requirements

Work conditions

They need to be thoroughly familiar with the property they are auctioning so they can recommend a realistic reserve price to vendors.

During an auction, they usually stand on a platform where they can be clearly heard and seen by all the people present.

Sometimes they work outdoors, for instance, when involved in an auction of livestock or real estate auctioned on the site. They may also work irregular hours, including evenings and weekends.

Personal requirements

strong, clear voice

able to make quick, sound decisions

self-confidence

able to address large groups of people.

Business agent

Business agents may exercise any of the following functions in relation to the buying and selling of businesses – that is, the business, not the property associated with the business.

A business salesperson is employed to act under the supervision of a licensed business agent, carrying on the functions of a business agent.

There may be some limitations and variations to tasks that can be carried out with this level of registration which will vary from state to state.

Duties and tasks

Business agents may perform the following tasks:

selling, buying or exchanging or disposing of:

- businesses or professional practices or
- the goodwill of or any stocks connected with businesses or professional practices

negotiating for the sale, purchase or exchange of:

- businesses or professional practices or
- the goodwill of or any stocks connected with businesses or professional practices

A business agent will operate with a real estate licence, with the licence requirement varying from state-to-state.

Real estate receptionist

Carrying out clerical and administrative with or without minimal real estate interaction:

- filing and photocopying
- typing and word processing
- managing accounts, invoices and orders
- billing clients and customers
- maintaining records and journals, including payroll
- answering calls
- cash handling
- operating a telephone switchboard
- attending a reception desk
- secretarial and executive support services.

People in real estate

Four parties are entitled to negotiate real estate transactions:

Property owners (individuals, groups or companies)

Real estate agents

Property buyers (individuals, groups or companies)

Tenants (individuals, groups or companies)

Property owners

In the sale of property, the vendor sells and the purchaser buys.

With rentals, the landlord is generally the owner and the tenant the occupier of the property.

An owner reserves the right to sell or rent a property at will for a negotiated price. Only the vendor and the purchaser are involved if the property is sold, and only the landlord and the tenant are involved if the property is rented. Any of the parties may appoint a solicitor or licensed conveyancer to assist with the transaction, but this is not necessary as long as the legal requirements are met.

For example, for a sale, the law requires that the contract must be in writing and prepared by a solicitor or conveyancer. The vendor can obtain a blank copy of a contract from a conveyancing kit, complete and sign it and give it to the purchaser for signing.

Alternatively, a landlord leasing a residential property such as a flat must complete the prescribed residential tenancy agreement, sign it and give it to the tenant for signing.

Real estate agents

A real estate agent sells or rents property on behalf of another person. The estate agent has no interest in the ownership of the property being sold or leased.

In a sales transaction, three parties are involved:

- the vendor (seller)
- the agent who negotiates and brings about the deal
- the purchaser who buys.

In a rental transaction parties involved are:

- the landlord (owner)

the agent

the tenant (occupier)

The agent must hold a real estate agent licence or be employed as a Real Estate Salesperson (or Property Manager).

Principals in property transactions

The agency-principal relationship

The concept of the agency-principal relationship involves:

the principal - the person who instructs the estate agent and who the estate agent represents

the agent - who is authorised to represent the principal.

The contract of agency in real estate is the legal relationship that is formed when the principal (vendor or landlord) appoints the agent to arrange a transaction on the principal's behalf, evidenced by a written authority to do so.

The agent is authorised to represent the principal to find a third party who is willing to agree to the principal's terms. The principal and the third party then enter into a binding contract between themselves.

Every transaction must have a principal person who the real estate agent makes agreement with

Definition - Principal - the person who engages the services of an agency and to whom the agency should look for payment of the commission or fees, in return for services rendered

When selling a house the owner or vendor is the principal in the transaction

When an agent agrees to lease or manage a property the principal in the transaction is the property owner or landlord

A purchaser is the principal in the agreement when they engage the services of a buyer's agent

Guide - the principal in the transaction is the person who is paying for services

in some cases a third party may be engaged to act on the property owners behalf. Appropriate authority should be obtained before entering into agreement with a third party

Principal Transaction

Vendor - Sales Agreement/Authority

Landlord - Lease or management Agreement/Authority

Buyer - Buyer's Agreement/Authority

Agreement

When an agent and principal decide to enter into a property transaction, they are required to make a written agreement.

In the ACT, the terms of this agreement are set out in legislation.

Agents Regulation 2003

Schedule 3 Terms applying to all agency agreements

3.1 Identification of property

(1) The agreement must state the address of the property to which the agreement applies or must contain a description of the property that clearly identifies it.

(2) This section does not apply to an agency agreement to act for the buyer of land.

3.2 Names of parties to agreement

The agreement must state the names of each of the parties to the agreement (including the licensee).

3.3 Information identifying parties

The agreement must state the principal's address, the licensee's licence number and any business name under which the licensee conducts business.

3.4 Principal's authority to enter into agreement

The agreement must contain a statement to the effect that the principal warrants that the principal has authority to enter into the agreement.

3.5 Authorisation for licensee to act on behalf of principal

The agreement must contain a term stating particulars of the extent of the authority of the licensee to act as agent on behalf of the principal in providing services under the agreement.

3.6 Duration of the agreement

The agreement must contain a term stating the period for which the agreement remains in force or stating that the agreement remains in force until terminated.

3.7 Termination of the agreement

If the agreement provides for its termination by a party to the agreement, the agreement must state how and when it can be terminated.

3.8 Reimbursement of licensee

If the licensee is to be entitled to any sum or reimbursement for expenses or charges incurred by the licensee in relation to services provided under the agency agreement, the agreement must include a term that:

- (a) states that the licensee is so entitled; and
- (b) describes the services; and
- (c) states the amount that the licensee is entitled to and when it is payable; and
- (d) states that the services and amounts can be varied only with the agreement in writing of the principal.

3.9 Remuneration

- (1) The agreement must include a term stating—

(a) the circumstances in which the licensee is entitled to remuneration (by way of commission or otherwise) for services performed under the agreement; and

(b) the amount of the remuneration or how it is to be worked out; and

(c) when the remuneration is payable.

(2) If the agreement relates to the sale or purchase of residential property and provides for payment of commission to the agent worked out as a percentage of the sale or purchase price, the term must also state the amount of the remuneration to which the licensee will be entitled worked out on the basis of a stated estimated sale or purchase price for the property.

Schedule 4 Terms specific to agency agreements for sale of residential property

4.1 Exclusive agency and sole agency agreements

(1) If the agency agreement is an exclusive agency agreement the agreement must include the following statement:

IMPORTANT: This is an exclusive agency agreement. This means you may have to pay the agent commission even if another agent (or you) sells the property or introduces a buyer who later buys the property.

(2) If the agency agreement is a sole agency agreement the agreement must include the following statement:

IMPORTANT: This is a sole agency agreement. This means you may have to pay the agent commission even if another agent sells the property or introduces a buyer who later buys the property.

(3) An agency agreement is an exclusive agency agreement if the agreement provides for the agent to be entitled to commission on the happening of an event whether or not the agent or the client, or both, is or are the effective cause of the happening of the event.

(4) An agency agreement is a sole agency agreement if the agreement provides for the agent to be entitled to commission on the happening of an event (whether or not the agent is the effective cause of the happening of the event) unless the client is the effective cause of the happening of the event.

(5) The statement under subsection (1) or (2) must follow immediately after the term required by schedule 3, section 3.9 (Remuneration) and be no less prominent than that term.

4.2 Warning about other agency agreements

(1) The agency agreement must include the following statement:

WARNING: Have you signed an agency agreement for the sale of this property with another agent? If you have you may have to pay 2

commissions (if this agreement or the other agreement you have signed is a sole or exclusive agency agreement).

(2) The warning statement under subsection (1) must follow immediately after the term required by schedule 3, section 3.9 (Remuneration) and be no less prominent than that term.

4.3 Fixed term agency agreements

(1) If the agreement is for a fixed term that is longer than 90 days, the agreement must include a term that entitles the principal to end the agreement (without penalty) by giving 30 days written notice to the agent at any time after the end of the first 90 days of the term.

(2) This section does not apply to an agency agreement in relation to the sale of residential property if the contract for sale provides for the construction by the seller of a dwelling on the land.

4.4 Price at which property is to be offered

If the agreement provides for the property to be offered for sale by private treaty, the agreement must state the price at which the property is to be offered.

4.5 Sales inspection report to form part of agreement

The agreement must include a copy of any sales inspection report prepared by the agent and given to the principal under schedule 8, section 8.21 (Sales inspection report required for property).

Key operations

The key operations of a real estate agency include:

sales - listing, advertising and marketing a property or a business, negotiating the sale and arranging the signing of the contract between the vendor and the purchaser

property management - selecting tenants, leasing property, collecting rent, and the overall maintenance and management of real estate properties on behalf of the landlord.

Agency services

Services that relate to the legal functions of real estate agencies include:

marketing, sale and leasing - a range of property types including residential, commercial and industrial real estate

property management - across a range of property types including collecting rent, paying rates and insurance, repairs and maintenance, and providing a financial statement of money paid and collected each financial year

business broking - selling businesses (not necessarily including the property at which the business operates) on behalf of vendors

buyers' advocacy - where an estate agent acts solely for the buyer by sourcing suitable properties and representing the buyer throughout the buying process.

auctioneering - service for public of property to highest bidder

Real estate agents can also provide additional services such as management of owners corporations but they must be separately registered to do this.

Types of property

Property categories are determined by the way the property is used rather than its location. For example, a residential property can be in a large city or a small country town.

Different types of property include:

- residential property
- commercial property
- industrial property
- rural property
- short-term rental accommodation

Agency structure

Real estate agents must have an understanding of the various legal entities that can exist in any real estate transaction. Failure to recognise or document the property entity in a transaction could result in the wrong party being named on a title, or avoiding liability through incorrect identification.

Forms of business ownership

There are four forms in which a business may be owned and operated by a licensed real estate agent:

- Sole trader
- Partnership
- Company
- Trust

Sole trader

This is the most straightforward structure for a business. Basically, it means one person is making the business decisions. Of course, it doesn't necessarily mean that the business has only one worker. The sole trader can employ others to do any or all of the work in the business.

What are the advantages?

This type of structure is ideal if the business is not complicated, especially if it does not require a great deal of outside capital.

There isn't much paperwork in establishing this type of structure.

You may not have to register the business name (see above).

There are less stringent reporting obligations compared with other structures.

You may be able to deduct tax losses from personal income.

You are entitled to profits and the ownership of assets.

It's relatively straightforward to wind up.

What are the disadvantages?

You are personally liable for all debts.

Personal property may be vulnerable for debts and other business liabilities.

Large sums of capital are less likely to be available to a sole trader, and you may have to rely more on overdrafts and personal savings.

You may require enormous investments of time without the normal employee recreation leave and other benefits.

There may be issues of continuity of business in the event of death or illness.

Limiting liability

Talk to an accountant or lawyer about the legal ownership of personal assets or the use of trusts to limit liability. For instance, the family home may not be exposed if it is in the name of your spouse - you must get legal advice before you do this, because there are other consequences, especially if the spouse dies or you divorce. Also, you may not be able to do this if your sole purpose is to avoid a creditor. Get advice.

Tax

A sole trader pays tax in their own right, as part of their personal income tax return at the personal rate of income tax.

Partnership

Partners are joint owners of a business. They have the same goals and are equally responsible for the decisions made on behalf of the business.

Are all partners equal? Not necessarily. For instance, in many law firms there are senior and junior partners. However, the partners remain equal from a legal point of view. If there is no written agreement, all partners:

- share profits equally;
- cover losses equally; and
- take equal responsibility for the business's activities and trading.

A written agreement allows partners to change these general rules and record them in the agreement.

Partnership agreements

A partnership agreement is usually a good idea, otherwise there is no written record of the duties and responsibilities of partners, which can be very important if there's a dispute later on.

If there is no written agreement, the duties and responsibilities of partners are equal, which may not be what you want.

What does a partnership agreement cover?

It will cover issues like:

- the amount of money each partner brings into the partnership;
- how the profits will be divided;
- the different roles and responsibilities of each partner;
- the requirements to provide financial reports;
- the rights of partners to draw on bank accounts;
- how partners can leave the partnership and the consequences of this;
- what happens when the business is sold;
- how disputes are handled;
- the salaries;
- the rights of departing partners to start a similar business etc.

Partner's unlawful acts

What if the partner does something that is outside their authority under the partnership agreement? This depends whether the person who dealt with the partner knew (or should have known) the action was beyond their authority.

But even if this is so, it will sometimes still be possible for the person to claim compensation from the partnership. The lesson is clear: be very careful who you accept into a business partnership.

Tax

Partners must file a Partnership Return with the Tax Office. It includes a profit and loss statement, and the tax is paid individually by partners on the profits as part of their personal income tax.

Dissolving partnerships

Any partner can dissolve the partnership provided they do it in a way required by the partnership agreement. Make sure you see a lawyer about this, because there are often certain legal formalities, particularly in relation to the formal notice that is required.

Company

A company is incorporated by registration under the Corporations Act. A company is a legal entity which is set up to either:

hold investments, OR
run a business.

The features of a company are:

A company is owned by its shareholders.

A company is a separate legal entity from its shareholders.

The incorporation of a company is recorded in the Memorandum of Association, which states the:

name of the company,
liability of the shareholders,
amount of share capital, and
objectives of the company.

The internal running of a company is regulated by the Articles of Association, which state:

how the directors are appointed,
the powers and duties of the directors,
the rules on how the company is to be run, and
voting rights of the shareholders.

The shareholders at the company's annual general meeting elect the directors.

The directors control the running of the company on behalf of the shareholders.

The shareholders' liability for the debts of the company is limited to the nominal value of their shares.

Trust

A trust is a common business entity that is formed via an agreement between numbers of parties referred to as a trust deed. The two main types of trusts are a discretionary or family trust and a unit trust. Each Trust requires a trustee to be appointed, being the legal representative/owner of the assets, which can either be individual(s) or

a company. For the purposes of executing a business or real estate contract an example of the full name of this type of entity is set out as follows:

"John Smith Realty Pty Ltd as trustee for The John Smith Discretionary Trust"

the relevant state/territory regulatory body often requires the trustee to be licensed, under either a company or individual licence. In the above example, John Smith Realty Pty Ltd, being the trustee, will be required to hold a licence for this business entity to conduct a real estate business.

There also exist taxation and asset protection advantages via the use of a trust structure, however, this should be discussed with an accountant pursuant to individual circumstances.

Organisational structure

Having identified a form of ownership for the business, ie sole trader, partnership etc, a real estate agency then needs to decide whether it is going to operate independently or in collaboration in some form with other real estate agencies.

There are three ways in which a real estate agency may establish its operation:

Franchise groups

Independent agent

Marketing cooperative

Franchise groups

The definition of franchise given by the Australian Corporations and Securities Legislation 2000, is:

Franchise means an arrangement under which a person earns profits or income by exploiting a right, conferred by the owner of the right, to use a trade mark or design or other intellectual property or goodwill attached to it in connection with the supply of goods and services. An arrangement is not a franchise if the person engages the owner of the right, or an associate of the owner, to exploit the right on the person's behalf.

A general interpretation of franchise which can assist understanding of a franchised business follows:

(a) the franchisor authorises the franchisee to sell goods and services under the franchisor's marketing plan

(b) the franchisee's business is identified by the public as being associated with a mark that identifies it with the franchisor

(c) the franchisor can exert significant control over the franchisee's business and

(d) the franchisee is usually substantially dependent on the supply of goods and services by the franchisor.

An important factor in a franchise is that a franchisee generally has to pay either or both a capital payment, initially before entering the franchise, and an on going royalty of some description. This can be a significant proportion of the profit and in many instances is the major cause of conflict between the franchisor and franchisee as the franchisee believes it is not receiving any support for this fee. However, new car, motor cycle and farm machinery dealerships currently do not pay licensing fees.

A franchise is not in itself a separate legal entity but is created by a contractual arrangement between the franchisor and the franchisee. Franchisees are separate legal entities from the franchisor and can be established as a sole trader partnership or company. In this regard, the accrual of personal liabilities is no different to stand-alone forms of small business depending on the type of business structure used.

Independent agent

The real estate agency operates totally independently and has no permanent formal ties with other agents. The real estate agency may form links or marketing arrangements with other agents in regard to specific properties, but overall its operation is not linked with any other agent or organisation.

Marketing cooperative

In contrast to the franchise groups, a marketing cooperative is a non-profit group of independent real estate agencies who join together to benefit from common advertising, marketing practices, common name and economies of scale in the purchase of goods and services.

A marketing cooperative operates along similar lines to an industry association, with member agencies paying an annual membership fee consisting of a fixed amount rather than a percentage of turnover or sales commissions. A committee consisting of members elected at an annual general meeting administers the group. The prime function of the committee is to direct expenditure on behalf of the group.

While members are required to comply with the group's advertising guidelines and membership rules for daily operations, each business is independently owned and operated with greater potential for the development of individual practices than is the case with a franchise group.

Links for business structure

Links to assist with understanding business structure:

Starting a business guide

Choosing your business structure

Agency revenue

An estate agency successfully undertaking a property transaction is entitled to a fee known as 'commission' as payment for the service performed on behalf of its principal. This fee or commission must be negotiated and agreed to before the vendor or landlord engages the agency and must be evidenced in writing in the agency agreement.

In the case of a sales transaction, the fee may be a dollar amount or a percentage of the sale price of the property. A greater proportion of the negotiated fee is retained by the agency to cover operating costs. The remainder of the fee is paid to the salesperson who listed or sold the property. In some cases, salespeople receive a salary that may include a commission incentive.

The agency is also entitled to receive a fee when engaged by a landlord. The agency will receive a leasing fee for finding a suitable tenant for the property and will also receive a management fee if appointed to collect the rent and manage the property on behalf of the landlord. These fees may be a dollar amount but are usually calculated as a percentage of the rent payable. Property managers generally receive a salary and may also receive a small commission incentive payment.

Buying and selling real estate

The following video is based on NSW Fair Trading's selling guidelines for agents, however, the general notes addressed can be applied to all states and territories across Australia. See NT.GOV.AU for industry information specific to the Northern Territory.

Play Video

Key legislation

Key legislation for property transactions in the NT that regulate the operations of real estate agents

Agents Licensing Act 1979

Agents Licensing Regulation 1979

Schedule 4 Rules of conduct

Residential Tenancies Act 1999

Residential Tenancies Regulations 2000

Law of Property Act 2000

Auctioneers Act 1935

Discrimination

Real estate agents are to be aware of the principles of equal opportunity and discrimination when dealing with consumers and employees.

Equal opportunity and diversity

Workplace discrimination, harassment and bullying

NT Anti-Discrimination Commission

Customer service

Agents must be aware of discrimination in transactions.

Refusing service

The following video is based on NSW Fair Trading's anti-discrimination guidelines for agents, however, the general notes addressed can be applied to all states and territories across Australia.

Play Video

Direct and indirect discrimination

Direct discrimination is when a person is treated less favourably than another person because of their race, sex, marital status, etc. One example of direct discrimination would be if a landlord refused to rent to you because you have children.

Indirect discrimination is where there is a requirement (a rule, policy, practice or procedure) that is the same for everyone, but which has an unequal or disproportionate effect on particular groups (for example, women, people of certain races, young people). Unless this requirement is 'reasonable having regard to the circumstances of the case' (Anti-Discrimination Act), it is likely to be indirect discrimination.

The following are examples of possible indirect discrimination:

setting more restrictive standards, such as a higher-than-necessary income
requiring all younger tenants to have one of their parents sign the lease as a co-tenant knowing that they do not intend to live at the premises
having an across-the-board 'no pets' policy which also excludes the needs of disabled tenants, such as those with a service dog
requiring all applicants to have a proven rental history for a minimum number of years, which, for example, could exclude young people trying to rent their first home
placing unrealistic restrictions on the number of occupants permitted which, for example, could exclude those who are pregnant
having a complicated and long application form which may, for example, deter recently-arrived migrants from applying.

Privacy

There are 13 Australian Privacy Principles which govern standards, rights and obligations around:

collection, use and disclosure of personal information
an organisation or agency's governance and accountability
integrity and correction of personal information
the rights of individuals to access their personal information
The Australian Privacy Principles are principles-based law. This gives an organisation or agency flexibility to tailor their personal information handling practices to their business models and the diverse needs of individuals. They are also technology-neutral, which allows them to adapt to changing technologies.

A breach of an Australian Privacy Principle is an 'interference with the privacy of an individual' and can lead to regulatory action and penalties. Australian Privacy Principles

Links to information and assistance for business.

Australian Privacy Principles

Australian Privacy Principles guidelines

Tips to protect your privacy

Training resources

Agents Licensing Board and NT.GOV.AU

The Northern Territory Agents Licensing Board is responsible for:

- licensing real estate, business, and conveyancing agents
- registering agent representatives
- investigating allegations about licensed agents and registered agent representatives
- holding disciplinary inquiries against licensed agents and registered agent representatives.

The board is established under part 11 of the Agents Licensing Act 1979. Its activities and support services are funded by the Agents Licensing Fidelity Guarantee Fund of the Northern Territory.

More information can be found on the NT.GOV.AU website.

NT.GOV.AU is home to all Northern Territory-related information, including legislation covering a range of industries within the NT, including building, environment protection, fair trading, liquor, and transport.

Housing, property and land

Buying and selling a home

Information for home owners and landlords

Information for renters

Other helpful resources related to the services provided by NT.GOV.AU:

NT Civil and Administrative Tribunal (NTCAT)

Law Society NT

NT Consumer Affairs

A Guide to Renting in the NT

Rental bond

Legal Aid Commission NT

Discipline and penalisation

Agents Licensing Act 1979

Section 44 Disciplinary action

Section 67 Grounds for disciplinary action

Penalty units

In the NT, penalty units are covered by the Penalty Units Act 2009.

See the current value of a penalty unit in the NT.

The penalty unit value is reviewed in the NT every financial year.

Consumer protection

Consumer protection ensures the rights of consumers as well as fair trade, competition, and accurate information in the marketplace

Agents must be aware of their obligations to represent the property accurately in terms of consumer protection.

NT.GOV.AU offers advice on:

Unconscionable behaviour

Misleading and deceptive conduct

There are many aspects of consumer protection that agents should be aware of.

The Australian Competition and Consumer Commission (ACCC) offers guidance for real estate agents.

The Australian Consumer Law attends to False or misleading representations in relation to land.

The Australian Consumer Law - Resources and guides

The Australian Consumer Law - False or misleading representations about sale etc. of land

Foreign investment

The Foreign Investment Review Board (FIRB) attends to matters relating to foreign investment in residential and other real estate.

Agents are not directly responsible for providing guidance or monitoring compliance to foreign persons and their representatives, however, agents may choose to notify prospective purchasers of compliance for foreign investment to ensure the successful progression of property sales. In general, solicitors acting for the vendors or purchaser will ensure compliance.

Guidance material for reference:

Foreign Investment Review Board

Residential land

Other investments, including land investments and business investments

Foreign Investment Application checklist

Australian Tax Office - Residential investment

Legislation - Foreign Acquisitions and Takeovers Act 1975

Industry and regulatory bodies

Regulatory bodies for real estate in the NT

NT.GOV.AU

Australian Competition and Consumer Commission

Northern Territory Civil and Administrative Tribunal (NTCAT)

NT WorkSafe

NT Land Titles Office

NT Treasury

FairWork Online

Industry bodies for the NT

The Real Estate Institute of the NT

Real Estate Institute of Australia

Australian Livestock & Property Agents Association (ALPA)

Real Estate Employers Federation

Real Estate Buyers Agents Association of Australia (REBAA)

Property Council of Australia

NT Law Society

Real estate marketing pages

www.domain.com.au

www.realestate.com.au

Employment in real estate - NTT

Legislation sets out the arrangement for property licensing and registration in the ACT.

Licence/registration type

Role options

Transactions/activities

Real estate or business agent licence

Licensee in charge / principal agent.

Operate as licensed agent in agency.

Property sales (residential, commercial, and rural)

Property management (residential, strata, commercial, and rural)

Business sales

Trust account management

Auction sales

Real estate agent's representative

Work under the supervision of a licensed agent.

Buy, sell, exchange, or rent houses, businesses, land, or any interest in these

Negotiate on behalf of a buyer, seller, landlord or exchange or rent houses, businesses, or land

Show property to potential buyers

Inspect and assess property for sale or rent

Advertise property for rent or sale (includes setting up signs)

Open up a property for inspection for sale or rent.

Legislation and NT.GOV.AU

Agents Licensing Act 1979

Licensees and agent's representatives

Part XIII Miscellaneous

111A Licence not transferable

113 Improper use of licence

Licensee-specific

Part III Licensee to carry on business as agent

17 Unlicensed persons not to act as agents

20 Meaning of fit and proper person

22 Eligibility for licence

22A Board may approve course, qualifications or experience

23A Provisional licence on acquisition of business

24 Persons licensed or registered as agents elsewhere

25 Licence of company or firm

25A Restricted licence

26 Applications by persons other than companies or firms

27 Applications by companies or firms

28 Objections

29 Grant or refusal of licences

30 Board to hold inquiry before refusal

31 Issue of licences

31AA Notification of change of circumstance

31A Special endorsement for conveyancing agents

31B Board may approve course of competency-based training

32 Duration and renewal

32B Licensed agent when not carrying on business

Agents' representatives-specific

Part IV Registration of agent's representatives

32C Part does not apply to conveyancing agents

33 Agents' representatives to be registered
34 Directors, managers, &c., of licensed agent
35 Licensed agents not to employ unregistered representatives
36 Prohibition of employment by 2 agents
37 Application for registration
38 Furnishing of information
39 Qualifications
41 Certificate of registration
41A Restricted registration
42 Objections
43 Surrender of certificate
43A Annual fee
44 Disciplinary action
44A Board may suspend registration pending inquiry
44B Powers of Board after inquiry
44C Cancellation if become licensed as agent
45 Employer to be notified of suspension or cancellation of agent's registration
46 Unemployed representative
47 Notice of employment
48 Registrar may direct surrender
NT.GOV.AU

Real estate or business agent licensing

Agent's representative registration

National Employment Standards

There are rules about what employees are entitled to at work, such as what hours they work and how often they have to have a break. These rules can be set out in different places such as an award, registered agreement or an employment contract.

The Fair Work Ombudsman website provides information and advice about workplace rights and obligations.

Fair Work Online - employment

National Employment Standards

Workplace best practice guides

Fair Work Information Statement

Industry and occupation award

The minimum wages and conditions an employee is entitled to are set out in awards (also known as 'modern awards'). Awards don't apply when an employer has an enterprise agreement or other registered agreement and the employee is covered by it.

Every award has information about who is covered under the award. To work out which award applies, read:

the coverage clause (usually clause 4)

the job classifications (usually in the pay section or a schedule).

Awards and agreements

Award finder

If you know the award you need to use, you can look it up here.

Real Estate Industry Award 2020

Employee obligations

An employee has responsibilities towards an employer. Employees are required to:

perform all duties to the best of their ability at all times
use their best endeavours to promote and protect the interests of the employer
follow all reasonable and lawful directions given to them by the employer, including complying with policies and procedures as amended from time to time.
be honest
be punctual with regular attendance
obey lawful orders
respect confidentiality and privacy relating to information held in the business
act with safety and care in the workplace
have knowledge of the terms and conditions of employment.
These policies and procedures are not incorporated into a contract of employment.
Employees will also need to be aware of confidentiality issues at work. An employee must not, except with the consent of the employer, use or disclose confidential information relating to the business of the employer, including but not limited to client lists, trade secrets, client details and pricing structures.

NT WorkSafe

Worker rights and responsibilities

Employer obligations

In an employment relationship with a real estate salesperson, a licensed agent must:

pay a minimum weekly salary
compensate the agent's representative for expenses properly incurred in the usual course of business activities
take all reasonable precautions to ensure that the agent's representative is not subject to unnecessary risks in the course of employment by providing proper premises and equipment, a competent staff of people, security in dealing with the public, a safe system of work, and safe access to that system
compensate the agent's representative for injury arising out of, or in the course of, this employment; this is a statutory requirement and the compensation scheme is WorkSafe
deduct an appropriate amount of income tax from an agent's representative's weekly pay and remit this to the Taxation Department
provide an agent's representative with two copies of a Group Certificate or Tax Stamp Sheet at the end of each financial year
give the employee the required notice of intention to terminate employment and the required payment; where the dismissal is for misconduct, salary should only be paid up to the time of dismissal; where no agreement exists, it relates to the employer's usual pay period.

Record-keeping requirements

Setting up the right record-keeping system for your business will help you work efficiently, meet legal requirements and strengthen customer and staff relationships.

There are certain record-keeping requirements for businesses in Victoria, and there may be specific laws and requirements related to your industry

sector. It's a good idea to protect yourself by seeking expert advice before setting up a record-keeping system for your business.

Laws that apply to your business will determine how long you need to keep records. If you use an electronic record-keeping system, you must also be able to produce a hard copy of a record if the Australian Taxation Office (ATO) or Australian Securities and Investments Commission (ASIC) requests it.

For financial reporting, ASIC's Regulatory index - financial reporting breaks reporting requirements down by business type.

Personal financial records must be kept for 5 years, whereas the following records must be kept for 7 years:

financial records for your company

most employee records

all records of fringe benefits and capital gains.

Basic records

To meet basic legal requirements, you must keep the following:

a cash book or financial accounting program – that records cash receipts and cash payments

bank accounts – checkbooks, deposit books and bank statements

employment records – hours of work, overtime, remuneration or other benefits, leave, superannuation benefits, termination of employment, type of employment, personal details of workers, employee personal contact and employment details

occupational training records – for both you and employees to comply with work, health and safety laws including evacuation and emergency training attendance

sales records – invoice books, receipt books, cash register tapes, credit card documentation, credit notes for goods returned and a record of goods used by the business owner personally

proof of purchases – cheque butts (larger purchases), petty cash system (smaller cash purchases), receipts, credit card statements, invoices, any other documents relating to purchases including copies of agreements or leases

work, health and safety (WHS) records – workplace incidents, risk register and management plan, names of key WHS people (e.g. WHS representative, Trained Safety Advisor (TSA), first aid attendant), chemical storage records, first aid incident register, workplace assessments, Material Safety Data Sheets (MSDS).

NT WorkSafe

Business rights and responsibilities

Commission and real estate transactions

Agents' share of commission payments is often negotiated as part of their employment agreement. However, a commission payment must lie within the guidelines of the Real Estate Industry Award.

Agency commission

In terms of what an agency may charge as commission, we offer information as a guide.

Commission rates may vary from area to area and may change as the economic climate changes. It is a good idea to talk to a few agents and compare their services and fees for your own interest and information.

Commission and fees or other expenses can be negotiated between the client and agent. Some agents will include some basic marketing with commission fees as a selling point.

Real Estate Commission Rates Guide

State	Terms	City/Metro %	Out of Metro %
ACT	Negotiable	2.5	2.5 - 4
NSW	Negotiable		
	2 - 2.5	2.5 - 3.5	
NT	Negotiable	2.5 - 4%	
QLD	Negotiable	2.5 - 2.75	
SA	Negotiable	2 - 2.75	2.75 - 3
TAS	Negotiable	2.75 - 3.25	
VIC	Negotiable	1.6 - 2.5	2.5 - 3
WA	Negotiable	3 - 3.25	

The above-quoted real estate agent fees/commissions are a guide only.

Agents Licensing Act 1979

112 Agent not to share commission

121 No recovery of commission unless licensed

Understanding communication skills

Many people struggle to communicate effectively – both verbally and in writing. This results in ideas and thoughts that don't reflect their intended meaning, and that their recipients misunderstand or misinterpret. This usually results in frustration, missed opportunities, confusion and wasted effort. As communication breaks down, collaboration and progress become more and more difficult to achieve.

Communication is one of the most sought-after skills that employers look for in prospective employees. However, it is important to keep in mind that communication can only be successful when both the sender and receiver understand the key messages being transferred.

Stages of communication

Stages of Communication

Play Video

Understanding communication Communication

A seven-step approach assists in becoming more aware of what is happening as communication occurs.

Source

The Source is the sender of the message, and the "message" refers to the ideas and information wanting to be delivered. There needs to be clarity about what message is wanting to be communicated and why it is important – what is its main purpose and why should anyone care? The sender needs to be confident that the information being delivered is accurate and purposeful.

Encoding

Putting the message into a format for delivery that receiver will be easy to interpret (or "decode")

For example, the sender must be aware of any cultural difference between them and the recipient.

Don't assume existing knowledge.

A key part of successful encoding is knowing who the audience is, respect and understand who it includes to result in the message understood.

Channel

A variety of channels that can be used to send a message, like verbal and written communications.

Verbal communications channels include face-to-face meetings, videoconferencing and telephone.

Written communications include letters, reports, instant messaging, emails and social media posts.

Decoding

Accurate decoding of a message needs the receiver to take time to actively listen or carefully read it.

Confusion can often occur at this stage of the communication process due to a lack of background knowledge to understand the message, or not understanding certain jargon or technical language.

Receiver

It is important to remember that each person is different and will interpret a message subjectively. Each receiver in the communication process will bring their own ideas and feelings which will influence their understanding and response to a message.

Try to have the emotional intelligence and empathy to consider the ideas and feelings of the receiver before encoding/writing a message.

Feedback

The audience will give feedback when the message is seen or heard usually verbal or nonverbal. Senders should observe feedback to see that the audience properly understood the message.

If confusion occurs try adjusting the message, change language or break the subject into steps/remove technical jargon, or use graphs, charts or illustrations if the message is in written form.

Context

Context is the situation the message is delivered such as topic or business culture.

Tips for successful messages

Tips to remove barriers from the communication process:

Make your message concise and as short as possible

Proofread to check message is:

Well organised

Without errors

Eliminate the use of jargon

Use good body language when communicating verbally.

Keep the amount of information to what is necessary to reduce overload-sometimes less is more.

Keep the context relevant to the client

Communicating with clients

Effective communication is a key component of any successful client-based business. Learning to communicate well will improve relationships with clients, colleagues and other business associates. In this chapter we look at the communication process and explore some strategies for establishing effective relationships with clients and colleagues.

Communicating with clients

Communication involves sending and receiving messages. How messages are sent and how they are received is crucial. Part of the communication process involves interpretation, which can lead to problems. Distortions and misunderstandings are often the result of a misinterpretation of communication.

In an estate agency, staff communicate with clients in a number of ways, including:

face to face

telephone

email

letters and faxes.

Establishing rapport

Building rapport is building a connection to a person through communication. Building rapport helps the communication process, showing empathy and interest. People will communicate more freely if they are relaxed and comfortable with the other person.

An important strategy in effectively communicating with another person and building rapport is active listening. To listen actively to another person means learning to see, hear and feel in the same way that the other person sees, hears and feels. It involves a reflection back to other people of what they have said.

Using the 'you' approach when writing to speaks personally to your client projecting empathy and a personal tone. Sometimes adding 'us' created unity.

Dealing with complaints

Even well run businesses will receive complaints from clients at some stage. Complaints can be difficult to handle, but there is a positive side - they can give an insight into faults in a business and offer an opportunity to fix these faults.

Every business should have a system in place for handling complaints.

People usually complain for a reason. Whatever agency staff feel about the complaint, they cannot deny the customer's feelings of anger or disappointment and that is what must be dealt with.

Dealing with complaints involves four actions:

- listen - ensure that the facts are clear and the client feels valued;
give summarising and reflective responses
- act - offer an immediate solution if possible, or outline the actions the business will take to retain goodwill
- investigate - find out why the situation occurred
- learn - take steps to ensure that there is no repetition.

These steps apply even if the client is found to be wrong. Clients may be embarrassed by having to admit that they have made a mistake. It is important to put them at ease and to tactfully tell them that they have made a mistake.

In a conflict situation, it may be important to keep a written record of all communications between the business and the client.

Effective communication

Effective communication is vital in establishing positive workplace relationships.

People who work in the real estate industry communicate daily with:

- colleagues who work in the agency
- people who wish to do business with the agency
- other people who work for local councils, owners corporation managers and service providers

Communication Advantages & Disadvantages

Advantages of effective communication Disadvantages of poor communication

- messages and instructions are clearly and easily understood
- messages and instructions may be unclear and so may cause confusion
- time is used efficiently
- time can be wasted while confusing methods are clarified
- good relationships between colleagues/clients are developed
- employees/clients may feel they are being kept in the dark and lose trust in each other and management
- people feel involved if they are well informed
- misunderstandings may lead to tasks being carried out wrongly - time and effort maybe wasted
- potential misunderstandings can be cleared up easily
- poor client relationships result.

good client relationships are developed.

There are a number of barriers that can get in the way of effective communication. They include:

being physically uncomfortable

excess noise - finding it difficult to hear

being distracted or interrupted

lack of time and feeling rushed

preoccupation with self

language barriers

not liking the person who is speaking or being prejudiced against that person

feeling bored

thinking about other things

jumping to conclusions.

It is important to be aware that these barriers exist and to try to eliminate them when communicating with people.

Active listening

Listening is a very important skill and should never be underestimated.

It can be difficult and requires more than hearing what people say -

noise, emotion and mood can have a big influence on the listening

process. How people say things should also be taken into account, as well as their body language.

Active listening involves participating with the person who is communicating to show that the person is being heard. Nodding and maintaining eye contact will encourage the speaker to keep communicating. People feel valued when this occurs.

Summarising what people say is also a good strategy to demonstrate listening skills, for example, "So, what you're saying is..."

Questioning will have a similar effect, for example, "Where were you when this happened?"

Good listening skills involve:

maintaining eye contact

being attentive

keeping an open mind

not interrupting

giving regular feedback

being interested.

Verbal and non-verbal communication

Sending verbal messages involves speaking words. The words used are important and it is essential to use language that is clear and easily understood.

Wherever possible, use simple words rather than complicated ones. But the actual words spoken make up a very small part of the whole message. How the words are said can have a big impact on how the message is received.

Tone, volume and speed are important. 'Get out of here!' said angrily and loudly can be interpreted quite differently from 'Get out of here!' said softly with a giggle.

Communication experts say that body language makes up about 70% of the message communicated in a face-to-face situation. The way a person stands or sits can show a lot about feelings and thoughts. For example, in some cultures, avoiding eye contact is often interpreted as not paying attention or not telling the truth.

Body language
Play Video
Video transcript

Boredom - The hand supports the head; the degree to which the hand supports the head reflects the level of tedium in picture 1. The head is heavily supported (facial features look crumpled) indicating extreme boredom.

Evaluation - Gestures include a closed hand resting on the cheek, this shows the person is interested in what is being discussed. Often the index finger will be pointing vertically upwards on the side of the head.

Chin Stroking - Often following on from evaluation gestures, chin stroking signifies decision-making, we should take a back seat here and let the person come to their conclusions uninterrupted. What happens directly after chin stroking (decision making) will give the greatest clues to the nature of that decision.

Ready for action - Standing hands on hips indicates that the person wants to take positive action in response to what they're discussing (not to be confused with the aggressive hands on hips in order to appear imposing - obviously an angry person is ready to take action of a different sort).

Arm barriers - Arms crossed (unless the person is very cold or lounging in a chair), indicates a blocking action - resistance to what is being said, if accompanied by a blank expression they're simply not listening.

Clenched fist

- a) when arms are crossed
- b) when the unclenched hand is placed over the other holding it down, symbolically restraining the aggressive gesture

This indicates that the true feelings a person holds – they really don't like what's being said.

Clasped hands - in front of the body as a protective barrier are a sign of nervousness or insecurity.

Holding hands with one's self in front of the body is comforting in unfamiliar or stressful circumstances.

One arm placed across the front of the body clasping the other, is also a sign that a person is uncomfortable or lacking in confidence in a particular situation (such as standing before a crowd or a group of unknown people).

Conversely hands clasped behind one's back (often with head up and chin out) signify confidence or superiority – people in authority often use this gesture.

Fingers in the mouth - Fingers, and objects such as pens, and cigarettes placed in the mouth are a sign of anxiety. Babies are comforted and soothed by sucking on thumbs and dummies etc and this gesture is a mimic of that need for comfort.

Both hands behind the head - is a gesture of superiority, it demonstrates a degree of 'smugness', which tends to annoy the person or people it is aimed at.

This gesture can also intimate that the man is laying claim to territory.

The position of the man's legs (referred to as a leg lock) also indicates his feelings of superiority

Openness - Exposed palms signify openness and honesty, it is a submissive gesture indicating that the person has nothing to hide. This common gesture is used extensively by dodgy sales people, Watch out.....

Concealed palms suggest that the person is hiding something or concealing the truth.

Email and 'netiquette'

'Netiquette' promotes good feeling between sender and receiver when communicating via email.

Some points to ensure professional approach for emailing.

Use a meaningful subject line

set dates to Australian date format - day/month/year

make email message concise and to the point

answer all questions and any that may be pre-empted by your reply

using proper spelling, grammar and punctuation

use gender-neutral language

avoid use of abbreviations and acronyms - groups of letters mean different things in different contexts, always use the full term with acronym at least once

use spell check on all emails, but check for omitted words and readability before sending - proofread before sending.

Plain English

Plain English is a message that is conveyed in the clearest way possible. The main advantages of plain English are that it gets the message across faster so that the audience can read or hear, understand and act on the message the first time.

Plain English involves:

using short words instead of long ones

using active rather than passive voice
using short sentences
not using slang, metaphors or industry jargon
not being repetitive

Culturally appropriate communication

It is important that communications contain culturally appropriate messages that are not offensive to anyone. Cultural diversity can include consideration of:

ethnicity

race

language

cultural norms and values

religion

beliefs and customs

age

disability

sexuality

special needs

Respect for cultural diversity should be demonstrated in all communications and interactions with clients and colleagues. Where language barriers exist, ensure that efforts are made to communicate in the most effective way possible. If necessary, seek assistance from interpreters or other people as required. Never be judgemental of someone with a cultural difference.

The Australian Trade and Investment Commission (Austrade) gives information on countries and cultural expectations that will apply when you are dealing with clients of a particular cultural background.

Click on the country of interest

Select View the country profile

Select Doing business

Communication tips

Listening skills and communication tips

Always show respect for the client and never appear condescending.

Look the client in the eye when talking (if culturally appropriate).

Keep an open posture - do not cross arms or legs.

Match the client's vocabulary level.

Match the client's speech patterns - pace, tone and volume.

Keep the conversation positive.

Use clear language.

Be an active listener. Lean slightly toward the client. Nod and smile where appropriate.

Do not interrupt the client; allow sufficient time for questions and responses.

Speak in words that the client understands and avoid industry jargon.

Keep conversation short and to the point.

Use clarifying and summarising questions where appropriate.

Take notes when the client is talking.

Ask for clarification on key points if necessary.

Read the points back to the client and ask if there is anything missing.

Written communication

Good written communication skills are a must for business in today's marketplace, regardless of who the recipients are - clients, vendors, business partners or colleagues. Remember, first impressions matter, and errors, incorrect grammar and inappropriate wording immediately make a business appear unprofessional.

Email hints

Effective email communication follows many of the standard rules of letter writing, and it is important to check the text thoroughly before sending.

Use complete sentences, capital letters and punctuation where appropriate.

Emails should be short, clear and without jargon. Never assume that the person on the other end understands jargon or shorthand.

USING ALL CAPITAL LETTERS CAN MEAN SHOUTING. Never send an email in this style.